

CHAPTER NO. 874

SENATE BILL NO. 3779

By Henry

Substituted for: House Bill No. 3740

By Fitzhugh

AN ACT to amend Tennessee Code Annotated, Section 9-21-151; Section 9-9-113; Section 12-4-106 and Section 12-4-107, relative to public finance.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

WHEREAS, the State Funding Board consulted with public entities and public finance professionals regarding implementation of Chapter 392, Public Acts of 2005;

WHEREAS, it became apparent that few public entities have debt and derivative policies;

WHEREAS, transparency and accountability in public finance transactions is aided by clear and disclosed policies, including policies on the selection of public finance professionals;

WHEREAS, it is the legislative intent that the State Funding Board continue its practice of consulting with public entities and public finance professionals when developing model policies; and

WHEREAS, it is the legislative intent that public entities be accountable to the citizens for finance transactions by disclosing costs and details through a process designed to make government better in Tennessee.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 9-21-151, is amended by deleting the existing section and substituting instead the following:

(a) In addition to the definitions applicable generally to this Chapter 21, the following definitions shall be applicable to this section only:

(1) 'Advisor' means a financial advisor, swap advisor, or program administrator, with respect to a financial transaction, whether or not such title is used;

(2) 'Costs' related to a finance transaction may include, but are not limited to, fees and expenses of advisors, underwriters,

placement agents, counterparties, bond and other counsel, paying agents, registrars, trustees, escrow agents, verification agents, credit enhancement and liquidity providers, remarketing and auction agents, rating agencies, publishing, and other similar fees and expenses, whether or not payable at issuance. "Cost" may include recurring and nonrecurring fees and expenses occurring during the life of the transaction, debt service payments (including interest), and any payments made to a counterparty;

(3) 'Debt obligation' means bonds, notes, capital leases, loan agreements, and any other evidence of indebtedness lawfully issued, executed or assumed by a public entity;

(4) 'Derivative' means an interest rate agreement, as defined in Section 9-22-103, and such other transactions related to debt obligations as identified by the State Funding Board;

(5) 'Finance transaction' means debt obligations, derivatives, or both;

(6) 'Public entity' means the state, a state agency, a local government, a local government instrumentality, or any other authority, board, district, instrumentality, or entity created by the state, a state agency, local government, a local government instrumentality, or combination, thereof;

(7) 'Public finance professional' means an advisor, underwriter, placement agent, counterparty, bond counsel, issuer's counsel, or other person or entity advising the public entity with respect to a finance transaction or offering to provide professional services with respect to such transaction; and

(8) 'State Funding Board' means the State Funding Board, created pursuant to Chapter 9 of this title.

(b) The State Funding Board is authorized:

(1) to develop model finance transaction policies for use by public entities; and

(2) to exempt from the filing requirements of this section any finance transaction:

(A) Deemed de minimis by the board;

(B) Where the public entity is required by statute to participate in the financing program;

(C) That is a conduit transaction for a non-governmental entity; or

(D) Where the disclosure of costs of the transaction is deemed not consistent with the public disclosure intent of this section.

(c) The board shall determine the information to be disclosed pursuant to this section including:

(1) A brief description of the finance transaction;

(2) The issuance, continuing and one-time costs of the finance transaction;

(3) A brief description of any continuing disclosure obligations with respect to the finance transaction;

(4) A copy of the offering document, if any; and

(5) Such other information and in such manner as may be required by the board.

Not later than forty-five (45) days following the issuance or execution of a finance transaction by or on behalf of any public entity, such public entity shall submit, or cause to be submitted, such information to the governing body of the public entity, with a copy to the director.

(d)(1) Upon discovery by the public entity of a failure to comply with the requirements of this section, the public entity may immediately request permission from the director to permit a late filing of such information. In addition, upon discovery by the director of an omission or error or filing failure, the director shall notify the public entity of such noncompliance. The public entity shall submit the required information, along with an explanation for the noncompliance, within fifteen (15) days following its discovery or notice by the director.

(2) The director shall maintain a list of all finance transactions discovered as not complying with the requirements of this section, along with a description of the nature of the noncompliance. The director shall also maintain lists of all public entities that have failed to respond to the director's notification of failure to file. The lists of entities that have failed to comply with the requirements of this section shall be a public record. Upon receipt of the information required for any finance transaction for which such information is noncompliant, the director shall remove the public entity from the list of those that have failed to respond to the director's notification and shall notify the public entity of its removal. If a public entity is on the director's list of public entities that have failed to respond to the director's notification of failure to file, no finance transactions may be issued by such public entity until the director has removed such public entity from the list.

SECTION 2. Tennessee Code Annotated, Section 12-4-107, is amended by deleting the existing section.


SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. No expenditure of public funds pursuant to this act shall be made in violation of the provisions of Title VI of the Civil Rights Act of 1964, as codified in 42 United States Code 2000(d).

SECTION 5. This act shall take effect July 1, 2006, the public welfare requiring it.

May 23, 2006


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 5th day of June 2006


PHIL BREDESEN, GOVERNOR